ATTORNEY FOR APPELLANT:

ELIZABETH GAMBOA
Franklin, Indiana

ATTORNEY FOR APPELLEE:

THEODORE H. RANDALL, JR.
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.B., J.G., and R.B., MINOR CHILDREN, AND THEIR MOTHER CHRISTINA BELTRAN,	)	
CHRISTINA BELTRAN,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A05-0609-JV-507
MARION COUNTY DIVISION OF FAMILY AND CHILDREN,	)	
Appellee-Petitioner,	)	
And,	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria J. Ransberger, Special Judge
Cause No. 49D09-0507-JT-26644

April 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Christina Beltran appeals the termination of her parental rights. We affirm.

Issue

Beltran raises one issue, which we restate as whether she received proper notice of the termination hearing.

Facts

On March 8, 2006, a hearing was held on the petition to terminate Beltran's parental rights filed by the Marion County Department of Child Services ("DCS"). At that hearing, the trial court scheduled the final hearing as a second choice trial on August 23, 2006, and as a first choice trial on September 25, 2006. As of the March 8, 2006 hearing, the DCS records indicated that Beltran lived at 402 South Oakland Avenue in Indianapolis. On March 9, 2006, the DCS sent a notice of the final hearing to that address.

In May or June 2006, Beltran indicated to her case manager that she had moved to 264 Rural Street in Indianapolis. On June 2, 2006, the DCS sent a second notice of the

same August 23, 2006 hearing to a prior address at 1913 East Pleasant Run Road in Indianapolis.

The trial court held the hearing on August 23, 2006. Beltran did not attend but was represented by counsel. At the beginning of the hearing, Beltran's attorney moved for a continuance because Beltran was not present and was "engaged in services." Tr. p. 6. At the conclusion of the hearing, Beltran's attorney moved for judgment on the evidence on the issue of notice. The trial court denied this motion and granted the DCS's petition to terminate Beltran's parental rights. Beltran now appeals.

Analysis

Beltran argues that the second notice of the hearing was not sent to her last known address, rendering notice insufficient. She contends that termination of her parental rights should be vacated because of insufficient notice.

Indiana Code Section 31-35-2-6.5(b) governs notice in termination proceedings and requires in part that at least ten days before a hearing the DCS shall send notice to the child's parent. A proceeding to terminate parental rights is governed by the Indiana Rules of Trial Procedure. In re A.C., 770 N.E.2d 947, 949 (Ind. Ct. App. 2002). Service should be made in the best possible manner reasonably calculated to inform the respondent of the pending action. Id. Indiana Trial Rule 5(B) provides that service upon a party "shall be made by delivering or mailing a copy of the papers to him at his last known address."

We have recently observed:

> "Compliance with the statutory procedure of the juvenile code is mandatory to effect a termination of parental rights[.]" However, statutory notice is a procedural precedent that must be performed prior to commencing an action, but it is not an element of the plaintiff's claim. Failure to comply with a statutory notice is a defense that must be asserted. Once placed in issue, the plaintiff bears the burden of proving compliance with the statute.

In re E.E., 853 N.E.2d 1037, 1042 (Ind. Ct. App. 2006) (alteration in original) (citations omitted), trans. denied.

Here, Beltran's attorney's motion to continue was initially based on the fact that Beltran was not present at the hearing because she was "engaged in services." Tr. p. 6. Beltran's attorney did not make arguments regarding insufficient notice until after the DCS concluded its presentation of evidence, at which point he moved for judgment on the evidence. Assuming that the lack notice defense was properly before the trial court, we conclude that Beltran received proper notice of the hearing.

At the hearing, the case manager, Karis Hopson, testified, "Ms. Beltran has had several different address since the initiation of the CHINS and my involvement." Tr. p. 34. Hopson stated that "at one point" Beltran lived at 402 South Oakland Avenue and that the DCS attorney sent Beltran a notice to that address. Tr. p. 49. Hopson also testified that either she or Beltran gave the DCS attorney the South Oakland address at the March 8, 2006 hearing. During August 23, 2006 hearing, the attorney for the DCS stated that on March 9, 2006, he sent a notice to Beltran at the South Oakland address informing her of the August 23, 2006 hearing and that this letter had not been returned. A copy of this letter was admitted into evidence without objection.

Regardless of whether the second notice was properly mailed to Beltran's last known address, when the March 9, 2003 notice was sent, all evidence indicates that it was sent to Beltran's last known address. Because the hearing date remained unchanged, any subsequent attempts to notify Beltran of the August 23, 2006 hearing were merely superfluous to the March 9, 2003 notice. Further, we will not create a requirement that the DCS repeatedly notify a parent of unchanged upcoming hearings simply because the parent's address has changed. Because proper notice was sent on March 9, 2006, Beltran's argument fails.

Conclusion

The March 9, 2006 notice was sent to Beltran's last known address and was sufficient to inform her of the August 23, 2006 hearing. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.